

EXHIBIT

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CR 306

25

Court of Appeals
State of New York

The People of the State of New York,

Plaintiff-Respondent,

vs.

John Taylor,

Defendant-Appellant.

Brief of the
New Jersey Crime Victims' Law Center
Amicus Curiae

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Preliminary Statement

This is an automatic appeal from a judgment of the Supreme Court, Queens County (Fisher, J.), rendered on January 8, 2003, convicting the Appellant John Taylor of six counts of first-degree murder and sentencing him to death and various sentences of imprisonment.

Interest of Amicus

The New Jersey Crime Victims' Law Center (VLC) services crime victims and victim service providers by providing independent *pro bono* legal assistance to crime victims in the criminal, juvenile and municipal courts of New Jersey. VLC provides information and direct assistance to victim service providers, appears as *amicus curiae* on behalf of county prosecutors on issues affecting the rights of crime victims, and provides appellate advocacy in supporting, advancing and strengthening the rights of crime victims in our legal system. Founded in 1992 after the tragic murder of the son of its director, Richard Pompelio, the Center was the first of its kind in the United States. The Center has served as a model for other *pro bono* crime victim law clinics that have developed in other states. The VLC is the oldest, and now part of a national victims' rights network led by the National Crime Victim Law Institute of Lewis & Clark Law School in Portland, Oregon.

VLC files this brief on behalf of a class of New Jersey crime victims who have endured nearly a quarter century of capital punishment – a full thirteen years longer than our counterparts in New York have endured. We seek to shed the light that only hindsight can provide, to share a perspective that the New York State Court of Appeals and homicide survivors in New York could not otherwise acquire – having only a decade of experience with capital punishment – in the hopes pain will be spared to future crime victims in New York State.

Introduction

For 24 years, New Jersey's crime victims have suffered at the hands of a capital punishment system that drags on and on and provides no relief to them; that promises justice but supplies pain; that allows officials to claim victims as their own but then discards them as they wait for an end that never comes.

In New Jersey today, there is a raging debate over whether to maintain or discard the capital sanction. As we submit this brief, the New Jersey Death Penalty Study Commission has just concluded several months of public hearings, not unlike those held in the New York State Assembly in 2004 and 2005, to determine what to do with the problem of the death penalty. Like the New York State Assembly decided last year, we hope that the hours and hours of testimony will convince the Commission to recommend ending the death penalty in favor of life without parole.

Please, make no mistake. We hope for abolition not out of any respect or sympathy for killers. We are neither bleeding hearts nor reformers advocating for the accused. We are simply pained pragmatists who have watched the system try to work with the best and most noble intentions and continually fail, prolonging our pain and delaying our healing. Many of the victims we represent would support capital punishment if it could have been swift and sure and carried out back in 1982, or 1987, or 1994, or 2001, or even last year. Indeed, they supported it when their loved one was murdered, and for many years afterwards hoping that the system would quickly deliver the justice it promised. But that cannot be in New Jersey and it cannot be in New York, nor in any state where due process takes time.

At a critical moment in your history, we come to you as victim advocates, like the ghost of Christmas future, bringing with us a lesson we learned the hard way, having lived through it for 24 years. You have the chance to escape your nightmare after only 11. Trust us – it only gets worse.

This court by its decision in *People v. LaValle*, 3 N.Y. 3d 88 (2004) has already bestowed a gift on New York victims that we in New Jersey are now fighting for. You have given your state a way out of your death penalty, leaving life without parole as the top count for murder. In this brief, we argue why victims are better served by this punishment and outline the pain caused for us by a “well-honed” capital punishment system that extends our trauma into futures none of us can bear.

Argument

The experience of New Jersey's victims lead inexorably to the conclusion that life without parole is preferable to the death penalty as the sanction for first degree murder

On September 27, 2006, the New Jersey Death Penalty Study Commission met for their third hearing on the death penalty in New Jersey. New Jersey victims came forward, one after another, to share their experiences of thwarted justice and urged the Commission to end the death penalty and replace it with life without parole.

Jo Anne Barlieb was eight years old when her mother, Cynthia, was murdered. She was the oldest of four little girls, now orphaned by their mother's murder. During the next 17 years, Jo Anne would live through three separate death penalty trials. In the first in 1986, a jury convicted Jacinto "Joey" Hightower of capital murder and sentenced him to death. The sentence was reversed in 1990. In the next retrial, Hightower again received the death penalty. In 1996, another trip to the New Jersey Supreme Court produced another reversal. In 2002, at yet another retrial, Hightower testified that he was now a model prisoner. He could not, however, muster up an apology for the victim's family. The jury deadlocked and Hightower escaped the penalty of death. JoAnne was now 25, having spent the preceding 17 years of her life helping rear her younger sisters, traveling to court more times than she could count, and praying this justice system nightmare would end.

She told the Commission, "I can testify from experience that our current system is most unjust for the victims and their loved ones. I can only hope to save other families from the grief of the never-ending appellate process. I promote the substitution of the death penalty only with a life sentence that truly means life in prison with no possibility of parole." Public Hearing before the New Jersey Death Penalty Study Commission 20 (Sept. 13, 2006) (testimony of Jo Anne Barlieb), <http://www.njleg.state.nj.us/legislativepub/pubhear/DPSC091306.pdf>.

When asked by a commission member how she would advise another family if given the choice by the prosecutor to seek death or life without parole, JoAnne answered, "Without a doubt, I would advise them to seek life without parole."

Sandy Place is the daughter of Mildred Place, who was murdered in 1996 on the day of her daughter's first birthday. Her mother's killer was sentenced to die for beating, sodomizing,

torturing, and finally strangling Mildred Place. Four years later, the sentence was overturned because the New Jersey Supreme Court deemed the crime not "heinous" enough on proportionality review. Sandy told the Commission:

Nearly eight years since the jury delivered the verdict of death, I am still forced to focus on my mother's killer. If the killer were given life without parole, and I mean a true life sentence, I would not be here. I would not be forced to discuss the killer and the verdict and the ways in which my life has been affected. Each court date, each appeal, each write-up in the newspaper, revisiting and revisiting the pain, each event keeping me that much further from the curative process I and my family so greatly deserve.

If I were asked to speculate what the difference would be in my life, I would say I would be eight years further in my healing process. Who knows what that would mean. Would I finally feel safe and secure again; would I laugh more easily; would I be able to walk into a dark house without panicking; would my children have the freedom to ride their bicycles around the block; would I stop seeing my mother's killer in the park or near my children's schools; would I be living and not simply existing?

Public Hearing before the New Jersey Death Penalty Study Commission 10 (Sept. 13, 2006) (testimony of Sandra Place),
<http://www.njleg.state.nj.us/legislativepub/pubhear/DPSC091306.pdf>.

There are innumerable stories in New Jersey that parallel Jo Anne Barlieb's and Sandy Place's. Even the two crime survivors in New Jersey who testified in favor of capital punishment told a story of being wrenched and pulled around by the justice system, through reversals and appeals and years and years of waiting for the promised execution that does not arrive. The only difference between those two victims and the ones represented by this brief is that they have not yet thrown up their hands in defeat that the system has harmed them more than the mythical execution might someday help.

The VLC has represented countless victims' families in death penalty cases and the additional anguish caused by the process is overwhelming. When we first see a client, we silently pray that the prosecutor will decide against pursuing the death penalty, not because we oppose it in principle, but for the victims and the hope that they will be spared the pain, isolation, and despair the death penalty process will inevitably bring.

New York Is Like New Jersey

New York's death penalty system is similar to New Jersey's in that few cases result in a death sentence, and those that do are likely to be reversed. Neither state has executed anyone in over 40 years. A recent report by New Jersey Policy Perspectives found that New Jersey has spent over a quarter billion dollars on its death penalty, resulting in only nine men on death row and no executions. Money for Nothing? The Financial Cost of New Jersey's Death Penalty (New Jersey Policy Perspectives 2005), http://www.njpp.org/rpt_moneyfornothing.html. Meanwhile, the Barlieb family received only \$4,500 from the Victims of Crime Compensation Board.

Testimony before the New York State Assembly by District Attorney Robert Carney, Hearings on the Death Penalty in New York before the New York State Assembly Standing Committee on Codes, Judiciary and Correction, 227th Sess., 8 (Feb 8, 2005) (testimony of Schenectady District Attorney Robert M. Carney), and others estimated that New York has spent \$200 million, resulting in now only one man on death row and no executions.

For both of our states, these figures are just the beginning. Victims in New Jersey can expect to see many more years pass and millions more dollars spent before an execution is carried out, if ever. Victims in New York, if the death sentence in this case is affirmed, can assume many more years of suffering through appeals on state post conviction, review in the Appellate Division, federal habeas and the several layers of district court, circuit court, and Supreme Court that entails, multiple trips back to the Court of Appeals and the Supreme Court intermittently throughout the process, and finally the clemency process. And all of that assumes that John Taylor loses at every stage of the process.

The courts have ruled time and again that death is different, and so every death case is another opportunity to refine the law, to try to perfect definitions and clarify ambiguities. The result of this legal tinkering leaves victims feeling as though there is no rhyme or reason to a justice system whose decisions seem absurd. This tinkering is far less likely to arise when the sentence is life without parole in the first place.

The testimony of Debra Jaeger, sister of Jill Cahill, before the New York State Assembly on January 25, 2005, starts off similarly to the testimony of some of the victims who testified in New Jersey. Ms. Jaeger explained to the presiding committees that she was ambivalent about the death penalty prior to her sister's murder. When her sister was murdered, she did not go to the prosecutors to proactively ask that they pursue a death sentence. When she was told by the

prosecutors that the case was a death penalty case, she put her faith in the jury and the courts to decide the murderer's fate, and when the jurors and the court made what she called the "difficult decision" to sentence Jeff Cahill to die, she felt justice had been served. Hearings on the Death Penalty in New York before the New York State Assembly Standing Committee on Codes, Judiciary and Correction, 227th Sess., 131 (Jan. 25, 2005) (testimony of Debra Jaeger). And when the Court of Appeals overturned that death sentence, People v. Cahill, 2 N.Y. 3d 14 (2003), on what felt to her and her family like a technicality – whether legally sound or not – she felt she had become victimized once again, this time by the capital punishment system.

Though Ms. Jaeger testified in favor of the death penalty, she repeatedly stressed that "if" the statute were to be restored, it must close the loopholes that allowed her sister's killer to escape the jury's original punishment. The word "if" is significant. In New Jersey, the victims represented by this brief would also say "if" – but we have come to understand after 24 years that there is no "if." The capital punishment system, by its very nature, in providing full due process to the accused, can never close enough loopholes to cease dragging victims through its endless labyrinthine tunnels. As such, it must be laid to rest.

Years of working with victims' families has taught us that most victims are like Ms. Jaeger. They do not need, nor do they want, the vengeance of death, as too many surmise. They want justice.

Conclusion

What victims need most from those working in the justice system is to have their right to fairness, compassion, respect, and dignity recognized and respected. It is hard to imagine a more devastating experience in someone's life than learning his or her loved one has been murdered. Attending the trial is an exhausting process of bearing witness to the slow-motion replay of the murder in an intimidating place like a courtroom, where the victim must sit mute and learn he or she has little say about the rules of the game. Families are placed in this adversarial system where justice becomes equated with winning and losing. And in death penalty cases, victims don't win.

Queens District Attorney Richard Brown has stated that the death penalty offers to victims a "false sense of closure." Michael Schenkler, DA Richard Brown: A Career Fighting Crime With Compassion, Southeast Queens Press, Dec. 27, 2003,

<http://www.queenspress.com/archives/nfp/2002/1227/nfp.htm>. We agree. We implore you to keep the victims at the forefront of your consciousness and decide not to restore the death penalty. You will save John Taylor's victims, and countless others to come, decades of confounding pain that could have been avoided.

The death penalty process is a failure. Taxpayers can no longer bear the cost of this failure. And as for the victims – enough is truly enough.

Respectfully submitted,

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